



# The position of citizenship rights and national security in the Iranian legal system; A look at the defendant's defense rights

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## Abstract

Surveillance refers to a stage of the criminal trial process in which the accused is accused of committing a crime in the custody of judicial officers. The defense rights of the accused under the supervision of the Iranian Constitution consider ensuring the comprehensive rights of individuals, including men and women, and creating fair judicial security for all to be general duties of the state, and in the third chapter of the Rights of the Nation, by mentioning manifestations of the fundamental right, it has provided security guarantees for its restoration and continuation. One of the most important branches of this right is the right of the accused to defend himself in rejecting unjust claims or accusations before the judicial authorities. The right to defense refers to the totality of legal and judicial guarantees throughout a criminal trial with the aim of making a fair decision and free from judicial errors. The research method in this study is descriptive-analytical, relying on library sources, and it has been examined in an argumentative manner and with due regard to the limits of covering the defense rights of the person under surveillance in the Iranian trial system. The Iranian legislator has not provided a definition of the surveillance stage, but has merely determined a fixed period, which is 24 hours, for all crimes. Judicial officers are required to explain to the accused the defendant's defense rights, namely the right to be informed of the subject of the accusation and the evidence, the right to inform relatives, and the right to request a medical examination. In crimes against the internal and external security of the country and organized crimes with penalties specified in the law, the right to be accompanied by a lawyer for the accused has not been recognized.

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## 1- Introduction

The criminal trial process has various stages. Among all these stages, the surveillance stage, which is carried out by judicial officers in obvious crimes and before a judicial order and within a maximum of 24 hours, is of particular sensitivity because, on the one hand, keeping the person under surveillance is necessary to conduct initial investigations, accelerate the collection and prevent the destruction of evidence and traces of the crime. On the other hand, placing the person under surveillance is contrary to the presumption of innocence and the right to freedom of individuals. Also, due to the limited direct supervision of the judicial authority and the lack of complete coverage of the officers by the precise issues of criminal procedure, there is a possibility of violating the rights of the accused to commit the crime. Therefore, while it should be

applied in a limited manner, it is necessary to consider specific legal conditions and procedures for its application because failure to observe the defendant's defense rights, especially during the observation phase when the individual is in an unstable and weak position (Burikan and Simon, 2010), while not rehabilitating and rehabilitating the individual, strengthens the basis for his or her antisocial behavior, and on the other hand, confronts the political system of the country with a crisis of ineffectiveness and democratic legitimacy in the domestic and international arenas, and indirectly creates various political costs for that government in its relations with countries and its people (Najafi Abrandabadi (2009). Therefore, the art of criminal procedure is to combine the rights of the accused and maintain public order and security in society, or in other words, to establish a balance between maintaining public order and human dignity. The Criminal Procedure Law of 2013, influenced by the global model of fair trial, which is an integral part of international human rights documents, especially the International Covenant on Civil and Political Rights of 1966, has anticipated many developments in the criminal procedure process. One of the most important goals of approving this law is to observe the rights of the accused and maintain public order and security in society, or in other words, to establish a balance between maintaining public order and human dignity. The Criminal Procedure Law of 2013, influenced by the global model of fair trial, which is an integral part of international human rights documents, especially the International Covenant on Civil and Political Rights of 1966, has foreseen many developments in the criminal procedure process. One of the most important goals of approving this law is to observe the rights of the accused and the public order and security in society, or in other words, to establish a balance between maintaining public order and human dignity. The accused is the one who is emphasized in Article 1.

Establishing criminal justice has been one of the most important aspirations of mankind throughout history, and its realization will be possible in the light of holding a fair trial based on providing the right to appeal and defense. From the perspective of substantive law, Article 34 of the Code of Criminal Procedure recognizes the right to appeal and has foreseen the guarantee of implementation of the violation of this principle, which leads to the deprivation of the fundamental rights of the individual, in Article 570 of the Penal Code. Also, Article 2, Paragraph 3 of the Covenant on Civil and Political Rights adopted in 1966, Articles 7 and 10 of the Universal Declaration of Human Rights and the Citizen, have referred to this right. Undoubtedly, the realization of justice and security in society, given its close connection with the issue of ensuring the judicial security of citizens, is always a social concern in every civil and democratic society. According to the principle of justice, maintaining social security and respecting the rights of the plaintiff and the accused are among the most important principles in formal laws, and the effort to realize justice, the realization of all Justice is one of the characteristics of the government, so while preventing violations of social security, attention should be paid to protecting the rights of the accused. Including the principle of innocence, equality before the law and the court, prohibition of torture, appeal, etc. In this way, security creates obligations for individuals and the government. This means that individuals are obliged to respect each other's material and moral rights, and the government is also obliged, firstly, to create security for the people by enacting laws and establishing administrative and judicial organizations; secondly, to respect the rights and freedoms of citizens by submitting to the principle of the rule of law and not to violate them.

In conducting the research, a descriptive-analytical method was used, relying on library resources and, consequently, collecting and classifying data in an argumentative manner. The important questions of the present article are: first, what is the stage under surveillance and how long is it in accordance with the crime committed in the criminal laws of Iran and France? Second, what are the defense rights of security defendants at this stage? Third, what legal obligations does the legislator impose on the officers of the Ministry of Intelligence in the capacity of bailiffs? What has the judiciary decreed and what is the guarantee for its violation?

## **2- Under surveillance**

There is no definition of the stage of surveillance in the laws. Even before the enactment of the 1392 Criminal Procedure Code, according to some judicial opinions, this stage was not accepted in the judicial process. One of the innovations of the 1392 Criminal Procedure Code is the institutionalization of the stage of surveillance as one of the stages of the criminal procedure process (Ashouri, 1392). Introduction: Placing

a person under surveillance is his arrest in the course of an obvious crime. Therefore, it can be said that detention under surveillance is an option given by law to the judicial officer to detain those against whom evidence has been obtained in obvious crimes for a limited period of time for the purpose of investigation and with the notification of the judicial authority. Therefore, detention under surveillance, which is a measure depriving freedom under the law in certain circumstances, is within the authority of judicial officers and in order to complete the investigation and with the notification of the judicial authority" (Ardebili, 2004.)

In the 2011 amendments to the French Criminal Procedure Code, the legislator defined surveillance in Article 62-2 of the Criminal Procedure Code as "a coercive measure, the decision on which is entrusted to a judicial police officer acting under the supervision of a judicial authority, whereby a person who has one or more convincing reasons indicating the existence of a suspicion of having committed or begun to commit a crime for which the law provides for a prison sentence is placed at the disposal of the investigating officers (interrogators.)"

The minimum period of surveillance of defendants in the Criminal Procedure Code of Iran and France is 24 hours. Article 32 of the Constitution and Article 46 of the Criminal Procedure Code of 1392 emphasize this, and the note to Article 189 of the latter law considers surveillance exceeding 24 hours as illegal detention.

The Iranian legislator has merely determined a fixed period that is the same for all crimes and situations and has remained silent about increasing it in proportion to the crime and its specific circumstances (Ashouri and Sepehri 2013) and has deferred the fate of the accused regarding his arrest or release to the opinion of the judicial authority and has absolutely not made any regulations regarding the possibility of extending the period of observation in the places of judicial officers. While the French legislator has resorted to a kind of differential penal policy (Ashouri (2016)) and after the normal period of observation has elapsed, it has foreseen the possibility of extending it in proportion to the complexity and severity of the crime committed and the necessities of the investigation.

The duration of the first extension is 24 hours (Article 2-63 of the Criminal Procedure Code). France has allowed this extension in crimes of felony or misdemeanor punishable by imprisonment for one year or more with the written permission of the prosecutor, provided that one of the six cases of Article 2-62 of the Criminal Procedure Code is proven.

In gang and organized crimes, the period of surveillance, in addition to the previously mentioned 48 hours, can be extended for two 24-hour extensions or one 48-hour extension at the request of the prosecutor or investigator and a written and justified decision of the judge of freedoms and detention. Of course, examples of gang and organized crimes are specified in fifteen paragraphs in Article 73-706 of the French Criminal Code, which includes all types of crimes against property, persons and public security, provided that they have the characteristic of organization.

However, according to paragraph 11 of Article 73-706 of the French Criminal Code, which governs terrorist acts, the subject of Articles 421-1 to 421-6 of the French Criminal Code, if the evidence of the investigation or initial surveillance indicates a serious imminent risk of a terrorist act in France or abroad that requires international cooperation, the surveillance can be extended for a period of 24 hours, which can be renewed once more. Of course, issuing a permit for this period is solely within the authority of the judge of freedom of detention. Therefore, the period of surveillance in terrorist crimes is up to 144 hours.

2- The right of defense of the accused Under the Iranian Constitution, ensuring the comprehensive rights of individuals, including men and women, and creating fair judicial security for all are considered general duties of the state, and in the third chapter of the Rights of the Nation, by mentioning manifestations of the fundamental right, security has provided guarantees for its restoration and continuation. One of the most important branches of this right is the right of the accused to defend himself in rejecting unjust claims or accusations before the judicial authorities. The right to defense refers to the totality of legal and judicial guarantees throughout a criminal proceeding with the aim of making a fair decision and free from judicial errors (Ashouri, 1997). The reason for explaining the rights of the accused is also to ensure their defense

rights, because the requirement for the defendant to exercise his defense rights is that the accused be aware of his rights, so that, while respecting the principle of equality of arms for the accused against official authorities, including judicial officers, the accused is not forced to accuse himself (Qasemi Moghadam, 1995). The Iranian legislator has emphasized in Article 6 of the Criminal Procedure Code 1992 the necessity of the accused being aware of his rights in the trial process, and in Article 52, the duty of judicial officers to explain the rights contained in this law to the person under surveillance and to write them down. Unlike the French legislator, which has stated the rights of the person under surveillance in a concentrated manner in Articles 1-63 of the Criminal Procedure Code, the Iranian legislator has referred to the defense rights of the accused under surveillance in several articles, which we will examine in the following.

### **2-1- The right to be informed about the subject of the accusation and its evidence**

The starting point of the criminal trial process and the defense of the accused is the explanation of the charge, which is considered one of the fundamental rights of the accused. Because the defense of the accused against the charge or charges presented or attributed to him depends on the accused's awareness of these charges, and the quality of the accused's defense is proportional to the amount of information and awareness he has about the charge and its reasons. Explanation of the charge means the official announcement of the criminal behavior or behaviors to the accused by the investigator, judicial authority, or judicial officer in a language and manner that is understandable and comprehensible to him, given the specific situation of each accused (Ashouri, 2010). The obligation to explain the charge is stipulated in Article 32 of the Constitution 14 and Article 46 of the Criminal Procedure Code 151392. Of course, the explanation of the subject of the charge and its evidence must be done immediately after the person is under observation. Although Article 32 of the Constitution does not explicitly refer to explaining the charge in a language that the accused is familiar with, it can be inferred from the explanation of the charge, in addition to announcing it to the accused, the necessity of explaining and explaining the charge in a language that the accused is familiar with (Ashouri, 2013). This information must also be detailed and complete, meaning that it is necessary to explain the accusation and describe the details of the criminal incident, so that the accused must be informed not only of the reasons for the actions and behavior attributed to him, but also of its legal characteristics and precise text. (Ardebili, 2006)

In France, the obligation of the judicial police to inform the person under surveillance of the nature and time of the crime committed or the beginning of its commission, the place and the period of surveillance and possible extensions is stipulated in Article 631 of the Criminal Procedure Code.

### **2-2- Right to inform relatives**

Before the enactment of the 1392 Q.A.D.K., the right of the person under surveillance to contact his family and relatives was only mentioned in Section 5 of the Law on Respect for Legitimate Freedoms and Protection of Citizens' Rights 1383, and that too in a general manner and without any guarantee of enforcement. In this regard, Article 50 of the Q.A.D.K. stipulates: The person under surveillance may inform his family members or acquaintances of being under surveillance by telephone or by any means possible, and the officers are also obliged to provide the necessary assistance in this regard, unless they determine, based on necessity, that the person under surveillance should not exercise such a right. In this case, they must inform the judicial authority of the circumstances in order to obtain the appropriate order. In order to prevent damage to the investigation process, such as the escape or hiding of possible accomplices and deputies of the accused, or the destruction of traces and evidence of the crime, the right to information has been allocated to relatives, an allocation that is stated in a general and flexible wording, as determined by the officers. Of course, the final decision is up to the judicial authority, but if the accused is prevented from informing his family or acquaintances, the bailiffs must inform the prosecutor before the expiration of the period of custody in order to obtain the obligation (Khaleghi (2015). Of course, the text of the aforementioned article contains the phrase "family or acquaintances", which has a broader concept than family in the general sense and can also include people such as friends and colleagues (Moezzinzadegan and Jahani, 2015).

The legislator in Article 49 of the Criminal Procedure Code has also stipulated the right to obtain information about the status of the person under surveillance for some of his family members. The difference is that firstly, the family is limited to parents, spouse, children, siblings and siblings, and it seems to be exclusive. Secondly, obtaining information must be done through the county prosecutor or the Chief Justice.

The French legislator has stipulated the right to obtain information about one of the accused's relatives or employers in Article 63-1 of the Criminal Procedure Code. Of course, according to Article 63-2 of this law, the judicial police officer can prevent this due to the necessities of the investigation, but the authority to confirm the necessity is the Public Prosecutor.

### **2-3- The right to request a medical examination**

The right to a medical examination of the person under supervision is another innovation of the 2013 Q.A.D.K. Among the bases for accepting the right to medical examination of the accused is the prohibition of torture and prevention of physical and mental harassment of the persons under surveillance (*ibid.*) and it is one of the guarantees that blocks the way for possible misconduct by the officers. (Ardebili (2004). In this regard, the 1392 Q.A.D.K. has stipulated the right to request a medical examination of the person under surveillance, both by him or by his close relatives, in Article 51 of the Q.A.D.K., that upon the request of the person under surveillance or one of his close relatives, a doctor appointed by the prosecutor shall examine the person under surveillance. The doctor's certificate shall be recorded and recorded in the file. In the aforementioned article, the term "close relatives" is ambiguous, but by uniting the criteria between this article and Article 49, close relatives can be considered to be limited to members of a family, including father, mother, wife, children, brothers and sisters. Muezzin Zadegan and Jahani, 2015) The French legislator has foreseen in Article 3-63 of the Q.A.D.K. the right to a medical examination at the request of the accused or one of his family members and the authority to appoint a doctor and examine the person under surveillance at any time. It was pointed out that the period of supervision can be extended in proportion to the crime committed. Therefore, Article 88-06 of the Criminal Procedure Code has transformed the medical examination after the extension of the first period of supervision from the discretion of the accused to a legal obligation of the authorities. The Legal Assistant of the Judiciary (2012) has made this matter a matter of gang and organized crimes. Of course, Article 88-706 of the Criminal Procedure Code stipulates that upon the expiration of the 96 and 120-hour periods... In addition to the possibility of a medical examination from the beginning under supervision, from the beginning of each of the two extraordinary extensions of the medical examination by a selected physician... a judicial police officer is required.

### **2-4- Right to be accompanied by a lawyer**

The current trend of judicial systems in the investigation stage is towards the accusatory system and the principle of equality of arms, and the adversarial nature of the proceedings requires the presence of a lawyer and his/her accompaniment with the accused at all stages of the criminal proceedings, because very few citizens have legal skills, which means that the majority of people are not able to prepare and present an appropriate defense using legal and statutory solutions (Keramat and Habibzadeh, 2012)

Another innovation of the 2013 Q.A.D.K. is the recognition of the right to be accompanied by a lawyer during the observation stage in Article 48. This article stipulates: "When the accused begins to be observed, he/she may request the presence of a lawyer. The lawyer must meet with the person under observation, respecting and paying attention to the confidentiality of the investigations and negotiations, and the lawyer can submit his/her written observations for inclusion in the file at the end of the meeting with the accused, which should not exceed one hour. Accepting the presence of the accused's lawyer during the observation stage is primarily limited to meeting with the accused and mentioning written points at the end of the meeting, not defending the accused during interrogation or even attending interrogation (Khaleghi, 2015).

Secondly, considering the opposite meaning of Note 2 of Article 190 of the Criminal Procedure Code, Article 48 includes an appointed lawyer, and if the accused does not introduce a lawyer, the judicial officer is not

faced with an obligation in this regard. However, some jurists believe that Article 48 contains the right of the accused to defend himself through consultation with a lawyer. Therefore, if the person under his supervision does not have a lawyer, which is customary and customary in obvious crimes, if the accused requests a lawyer, a lawyer must be called for him by the judicial officers (*ibid.*). Thirdly, the text of Article 48 does not explicitly state the duty of the judicial officers to announce the right to request the presence of a lawyer to the accused. This duty is inferred from Articles 6 and 52 of the Criminal Procedure Code. The important and fundamental discussion is about the note to Article 48. A few days before the implementation of the aforementioned law in July (1394), the note to Article 1848 was amended on 24/3/1394 as follows: Note: In crimes against internal or external security, as well as organized crimes whose punishment is subject to Article 19302 of this law, in the preliminary investigation stage, the parties to the lawsuit shall select their lawyer or lawyers from among the official lawyers of the judiciary who are approved by the head of the judiciary. The names of these lawyers shall be announced by the head of the judiciary. The subject of discussion in this note is the phrase "preliminary investigations" because the text of Article 48, by implication of the position and the terms used therein, refers to the duties of the judicial officer and the lawyer's meeting with the accused at the stage of surveillance in crimes, while its note is related to the lawyer's meeting during the preliminary investigation stage, which is basically stated in Article 190.

Article 19 of the 1999 Code of Procedure for General and Revolutionary Courts in Criminal Matters defines preliminary investigations as a set of measures that are "taken to discover a crime, preserve the traces and evidence of its occurrence, and prosecute the accused from the beginning of the prosecution until surrender to the judicial authority." Considering the phrase "until submission to the judicial authority" at the end, it is clear that the aforementioned article is in the position of providing a definition of investigations carried out by judicial officers. (Khaleghi (2013) However, some jurists consider the definition provided in this article incomplete and consider preliminary investigations to be a set of measures and investigations carried out by judicial officers themselves or by order and referral of judicial authorities or by investigators, etc., and its main purpose is to prepare the case and facilitate and expedite the proceedings in court (Ashouri, 2010). Even considering the legislator's intention to separate the stages under supervision and preliminary investigations in the 2013 Criminal Procedure Code, they believe that preliminary investigations in Iranian criminal law include both the interrogations of officers and the general measures of the stage under supervision as well as the investigative measures of the investigating judges (Ashouri, 2016). Therefore, the question is, given the legislator's approach in 2013 in institutionalizing the stage under supervision, what does the phrase "preliminary investigations" in the note to Article 48 have? Is it meaningful? Is its general meaning, meaning the actions and investigations prior to the court hearing, before the judicial officers and the prosecution, or its specific meaning, meaning the preliminary investigations, starting from the time the case is referred to the investigation at the request of the prosecution authority? Muezzin Zadegan and Jahani (2015) Because if the general meaning is considered, in crimes against internal or external security and also organized crimes whose punishment is covered by Article 302 of the Criminal Procedure Code, the person under supervision has the right to meet with a designated lawyer approved by the head of the judiciary, but if the specific meaning of preliminary investigations is considered, the defendants under supervision of these crimes will not have the right to meet with a lawyer.

By presenting the definition that Article 90 of the Criminal Procedure Code and Note 1 of Article 105 of the Islamic Penal Code 2013 have provided for the preliminary investigation stage and the approach of the legislator in 2013 in institutionalizing the stage of supervision, it seems that during the stage of supervision, the defendants of the crimes mentioned in the Note to Article 48 of the Criminal Procedure Code will not have the right to meet with a lawyer.

Another point in Article 48 is that only Contact with the lawyer of the person under investigation is stated, so the judicial officers are not obliged to wait for the presence of the lawyer of the person under investigation. Also, this article only provides for the submission of written observations to be included in the file for the lawyer of the person under investigation and does not specify the possibility of the defense

lawyer's intervention in the interrogations. In other words, the legislator only provides for the right of the person under investigation to simply meet with the lawyer and has not considered rights such as studying the file, the possibility of intervention in the interrogations, or asking questions at the end of each investigation session in which the lawyer participated (Saqian, 2014).

In French law, the general rule of the right to be accompanied by a lawyer from the beginning of the detention of the person under surveillance is foreseen in Article 1-3-63 of the Code of Criminal Procedure, which according to Article 4-63, should not exceed thirty minutes. However, this right is also renewed with the extension of the period of surveillance. According to Article 2-4-63 of the Code of Criminal Procedure, the judicial police cannot start the first hearing and confrontation session without the presence of an appointed or occupied lawyer before the expiry of two hours from the time of announcing the right to be accompanied by a lawyer, unless the person under surveillance has not postponed his statements to the presence of a defense lawyer and the interrogation has begun with his consent. Of course, depending on the needs of the investigation and at the request of the judicial police officer, the prosecutor can issue a permit for the hearing session before the expiry of the aforementioned two hours. The prosecutor can even extend the right to be accompanied by a lawyer for up to 12 hours, and the judge of freedoms and detention can, at the request of the prosecutor, delay the presence of a defense lawyer for up to 24 hours in cases of felony or misdemeanor crimes punishable by imprisonment equal to or exceeding 5 years.

The French Criminal Procedure Code has further restricted the right to a lawyer in some crimes. According to Article 88-706, the right to a lawyer can be postponed for a maximum of 48 hours in gang or organized crimes and crimes and for a maximum of 72 hours in drug trafficking crimes and crimes. According to Article 88-1-706 of the Criminal Procedure Code, a suspect accused of terrorism can also request to meet with a defense lawyer after 96 and 120 hours of being under surveillance.

## **2-6- The right to express an opinion and remain silent**

The right of the person under surveillance to express an opinion or remain silent in response to the accusation or accusations is one of the most controversial defense rights of the accused. The issue is whether the accused has the right to refuse to answer questions from competent authorities, including the judicial officer, during interrogation. Is the judicial officer obliged to explain this right to the person under surveillance?

The origin of this right is the general principle of prohibiting forcing people to confess, which is stipulated in Article 38 of the Iranian Constitution and is the principle of innocence. The Iranian Criminal Procedure Code does not discuss the right to remain silent and the duty of the judicial officer to explain this right to the accused during the investigation phase. Although Articles 195-26 and 197-37 of the Criminal Procedure Code refer to the accused's right to remain silent during the preliminary investigation phase, the French legislator, in Article 63-1 of the Criminal Procedure Code, obliges the judicial police to inform the person under investigation of his right to express his opinion, answer questions, or remain silent in response to them, and there is no exception to this right in the French Criminal Procedure Code (Ashouri and Sepehri, 2013).

### **Enforcement guarantee**

The Q.A.D.K. has used the terms "must" and "must" in relation to the defense rights of the accused under surveillance by judicial officers. Unlike previous laws, the Q.A.D.K. 1392 clarifies the duties of officers who do not comply with the legislator's orders in this matter as follows.

The first discussion is about keeping a person under surveillance for more than the prescribed period. According to the note of Article 189 of the Q.A.D.K. 1392, keeping a person under surveillance for more than 24 hours is illegal, and the punishment for the perpetrator is one to three years in prison or a fine of six to eighteen million rials as stipulated in Article 583 of the Islamic Penal Code of the 1375 Book of Penal Code.

The second discussion is about explaining the defense rights of the accused under surveillance. Article 52 of the Q.A.D.K. obliges judicial officers to explain the rights stipulated in this law regarding the person under

surveillance to the accused and provide them with a written receipt and attach it to the file. Failure to explain the rights of the accused can be examined from two aspects. First, what is the status of the validity of the bailiff's actions and investigations? Second, what is the guarantee of legal enforcement in dealing with the offending bailiff?

In the first case, it should be said that the legislator has not explicitly addressed this issue in the law, but it can be inferred from some articles of the Code of Criminal Procedure that the actions of bailiffs in the event of failure to explain the rights of the accused are invalid, including Article 2 of the Code of Criminal Procedure, which declares one of the principles governing criminal proceedings to be the guarantee of the rights of the parties to the dispute, or Article 36 of the Code of Criminal Procedure, which stipulates that the bailiff's report is valid if it is prepared and compiled in accordance with legal rules and regulations.

In the second case, it should be said that Article 63 of the Code of Criminal Procedure 28 has stipulated a guarantee of execution of the sentence of three months to one year of dismissal from government service for the offending bailiffs. Of course, the legislator has referred in this article to the articles whose guarantee of execution is this dismissal. What is noteworthy is that of the rights mentioned, namely the right to be informed of the charges (Article 46), the right to be accompanied by a lawyer (Article 48), the right to inform relatives (Article 50), and the right to a medical examination (Article 51), only Article 51 is mentioned in Article 63, and the lack of clarification of the remaining rights has caused some jurists to consider, for example, the lack of clarification of the right to be accompanied by a lawyer as lacking a guarantee of execution (Saqian, 2014).

It seems that it is possible to establish the guarantee of execution stipulated in Article 63 for the violating officers through Article 52 of the Criminal Procedure Code. First, because Article 52 is among the articles specified in Article 63. Second, this article explicitly refers to the duty of judicial officers to explain the rights stipulated in this law to the person under surveillance.

Another point is that the legislator in Article 7 of the Criminal Procedure Code obliges officers to observe the rights of citizens stipulated in the Law on Respect for Legitimate Freedoms and Protection of Citizens' Rights approved on 15/02/2003, and the guarantee of its execution is the punishment stipulated in Article 570 of the Islamic Penal Code (Penalties and Deterrents approved on 2/3/1375) means dismissal from service and deprivation of one to five years from government jobs and imprisonment from two months to three years. Now the question is that the right to inform relatives is stipulated in Article 50 of the Islamic Penal Code and Section 5 of the "Law of Respect for Legitimate Freedoms and Protection of Citizen Rights" as one of the rights of the accused. Now what is the guarantee for the implementation of this right if this is not explained? Dismissal from government services for a period of three months to one year as stipulated in Article 63 of the Islamic Penal Code or dismissal from service and deprivation of one to five years from government jobs and imprisonment from two months to three years as stipulated in Article 7 of the Islamic Penal Code. It seems that the second punishment can be applied. The last point is that although the beginning of the text of Article 63 of the Islamic Penal Code refers to "violation", violating the provisions mentioned in this article is a crime and dismissal from government services is a criminal punishment and its handling is within the jurisdiction of the judicial authorities. (Khaleqi, 2015).

## **Conclusion**

The Criminal Procedure Code of 2013, influenced by the global model of fair trial, has brought about extensive developments in the criminal trial process. One of the innovations of this law is the institutionalization of the surveillance stage as one of the stages of the criminal trial process. The surveillance stage, which is carried out by judicial officers, is particularly sensitive due to the limited direct supervision of the judicial authority over judicial officers at this stage and the officers' lack of complete understanding of the precise issues of criminal procedure and the possibility of violating the rights of the accused. The legislator has emphasized in Article 6 of the Criminal Procedure Code of 2013 on the necessity of the accused being aware of his rights in the trial process and in Article 52 of the aforementioned law on the duty of judicial officers to explain the rights stipulated in this law to the person under surveillance and to write them down.

The Iranian legislator has not provided a definition of the surveillance stage, but the premise of a person being placed under surveillance is his arrest during a crime. Therefore, custody can be considered optional, which is given by law to the judicial officer to detain suspects and defendants in obvious crimes for the purpose of investigation and with the knowledge of the judicial authority for a limited period.

Its duration in Iranian law and in all crimes is 24 hours. In other words, the Iranian legislator has only determined a fixed period that is the same in all crimes and situations and has been silent about increasing it in proportion to the crime and its specific circumstances. While the French legislator, while providing a definition of the custody stage in the 2011 amendments to the Criminal Procedure Code, has set the minimum period for custody of defendants at 24 hours and has foreseen the extension of the custody period and the method of its application in accordance with the complexity and severity of the committed crime and the needs of the investigation. In gang and organized crimes, the period can be extended up to 96 hours, and if evidence indicates an imminent terrorist act, the period of custody can be extended up to 144 hours.

Despite the Iranian legislator's emphasis in Article 6 of the Criminal Procedure Code 1392 on the necessity of the accused being aware of his rights in the trial process and in Article 52 of that law on the duty of judicial officers to explain the rights stipulated in this law to the person under investigation, unlike the French legislator who has stated the rights of the person under investigation in a concentrated manner in several articles, the Iranian legislator has referred to this matter sporadically. On the other hand, in the Iranian Criminal Procedure Code, there is no distinction between the defense rights of security and non-security defendants, while in the French Criminal Procedure Code, in organized crime and terrorist crimes, some defense rights of the person under investigation are accompanied by exceptions. According to the Criminal Procedure Code 1392, the Ministry of Intelligence officers, in their capacity as judicial officers, are required to inform and explain to the person under surveillance in writing the right to be informed of the subject of the accusation and its evidence, the right to inform relatives, and the right to request a medical examination. Of course, in order to prevent damage to the investigation process, such as the escape or hiding of possible accomplices and deputies of the accused, or the destruction of traces and evidence, the right to be informed of the crime of relatives has been allocated in a general and flexible phrase, as determined by the officers, but the right to be accompanied by a lawyer for suspects and defendants of crimes against internal or external security and organized crimes punishable by death, life imprisonment, and imprisonment for more than ten years during the surveillance phase has not been recognized by the legislator. The French legislator has obligated the judicial police officer to inform the person under surveillance of the place of detention and its duration or to extend the period of the right to be informed of the subject of the accusation, the right to be informed of the subject of the accusation, the right to be informed of the subject of the accusation, the right to be informed of the subject of the accusation, the right to be informed of the subject of the accusation, the right to be accompanied by a lawyer, and the right to express an opinion or remain silent in a language that the person under surveillance understands and, if necessary, in writing. Of course, the right to a medical examination after the extension of the first period of custody, i.e. in gang, organized and terrorist crimes, is a voluntary right of the accused to the legal obligation of the authorities and the judicial police are required to conduct a medical examination of the person under custody within the dates specified in the law. Also, the right to be accompanied by a lawyer in gang or organized misdemeanors and crimes can be postponed for a maximum of 48 hours, and in drug trafficking misdemeanors and crimes or misdemeanors and crimes that constitute terrorist acts for a maximum of 72 hours. Another very important measure by the legislator is the provision of a guarantee of execution for violators. The 1392 Islamic Penal Code considers keeping a person under custody for more than the legally prescribed period, i.e. 24 hours, as an illegal detention, and the punishment for the perpetrator is one to three years of imprisonment or a fine of six to eighteen million rials, according to Article 583 of the Islamic Penal Code of the 1375 Book of Penalties. Also, according to Article 63 of the Islamic Penal Code, three months to one year of dismissal from government service awaits those officers who have not explained the rights of the person under custody to him. Of course, according to some articles of the Criminal Procedure Code, it can also be inferred that the actions of judicial officers are invalid if the defendant's rights are not explained.

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